

Message Text

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ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 NSCE-00 /026 W

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FM AMEMBASSY CARACAS

TO SECSTATE WASHDC NIACT IMMEDIATE 507

C O N F I D E N T I A L SECTION 1 OF 2 CARACAS 10672

EXDIS

E.O. 11652: GDS

TAGS: ENRG, PFOR, VE

SUBJECT: FORMAL GOV COMPENSATION OFFER TO PETROLEUM COMPANIES

WE HAVE BEEN GIVEN A COPY OF THE TEXT (MINUS THE NUMBERS) OF THE
CONFIDENTIAL OFFER OF COMPENSATION GIVEN TO ONE OF THE OIL COMPANIES.
WE ASSUME THE LANGUAGE IS STANDARD IN ALL THE OFFERS. FOLLOWING
IS AN INFORMAL TRANSLATION:

"ON INSTRUCTIONS OF THE PRESIDENT OF THE REPUBLIC OF VENEZUELA AND
SINCE, IN CONFORMITY WITH ARTICLE 1 OF THE ORGANIC LAW WHICH
RESERVES TO THE STATE THE INDUSTRY AND COMMERCE OF HYDROCARBONS,
THE HYDROCARBON CONCESSION WILL BE EXTINGUISHED AT MIDNIGHT,
DECEMBER 31, 1975, I PROPOSE TO YOUR COMPANY, IN THE NAME OF THE
NATIONAL EXECUTIVE AND IN ACCORDANCE WITH ARTICLE 12 OF SUCH LAW,
THE FOLLOWING OFFER:

I. WITH REGARD TO ONE-TIME INDEMNIFICATION

1. THE REPUBLIC WILL PAY TO THE COMPANY YOU REPRESENT THE SUM OF
.....AS A ONE-TIME INDEMNIFICATION FOR ALL THE RIGHTS IT HAS OVER THE
ASSETS RELATED TO THE HYDROCARBON CONCESSIONS OVER
WHICH IT HAS TITLE, ENUMERATED IN ANNEX "A", AND THOSE ON WHICH IT
HAS ENTERED INTO PARTICIPATION AGREEMENTS, AS SHOWN IN ANNEX "B".
2. THE INDEMNIFICATION REFERRED TO IN THE SECTION ABOVE COVERS ALL
THE RIGHTS TO THE ASSETS REFERRED TO IN ANNEX "C" AS WELL AS RIGHTS
OVER ANY OTHER ASSETS TANGIBLE OR INTANGIBLE ACQUIRED BY THE
COMPANY YOU REPRESENT WHEN IT IS PRESUMED THAT THEY WERE ACQUIRED
FOR INCLUSION IN THE CONCESSIONS TO WHICH IT HOLDS TITLE, INCLUDING
THE RIGHTS OVER ASSETS WHICH BENEFIT FROM THE SPECIAL TREATMENT
CONTEMPLATED IN ARTICLE 159 OF THE INCOME TAX LAW. RESERVATION

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IS MADE OF THE RIGHT TO OFFER PROOF TO THE CONTRARY BY THE COMPANY

YOU REPRESENT IN ACCORDANCE WITH ARTICLE 1 OF THE LAW ON ASSETS
SUBJECT TO REVERSION IN HYDROCARBON CONCESSIONS.

3. THE AMOUNT OF INDEMNIFICATION DETERMINED IN SECTION 1 OF THIS
CHAPTER HAS BEEN CALCULATED IN ACCORDANCE WITH ARTICLE 15 OF THE
ORGANIC LAW WHICH RESERVES TO THE STATE THE INDUSTRY AND COMMERCE
OF HYDROCARBONS AS FOLLOWS: 3.1 NET VALLUE:

3.1.1. NET VALUE OF PROPERTIES, PLANTS AND EQUIPMENT ON
DECEMBER 31, 1974 ACCORDING TO THE BOOKS USED BY THE COMPANY YOU
REPRESENT FOR INCOME TAX PURPOSES WITH THE CORRESPONDING SETTLEMENT
EFFECTED BY THE DIRECTORATE OF ASSETS SUBJECT TO REVERSION.....BS

3.1.2. LESS:

A) THE ESTIMATED AMOUNT OF DEPRECIATION AND AMORTIZATION FOR
FISCAL YEAR 1975.....BS

B) THE ESTIMATED AMOUNT OF THE WITHDRAWALS OF PROPERTIES,
PLANTS AND EQUIPMENT FOR FISCAL YEAR 1975.....BS.

C) ESTIMATED DECLINE OF MATERIALS IN EXISTENCE ON DECEMBER
31, 1974 APPLIED DURING FISCAL YEAR 1975.....BS

D) ESTIMATED VALUE OF THE MATERIALS IN EXISTENCE ON DECEMBER
31, 1974 WHICH HAVE BENEFITED FROM THE SPECIAL TREATMENT
PROVIDED IN ARTICLE 159 OF THE INCOME TAX LAW.....BS.

E) VALUE OF THE CONSTRUCTION IN PROGRESS ON DECMEBR 31, 1974 WHICH
HAS RECEIVED THE SPECIAL TREATMENT PROVIDED IN ARTICLE 159 OF THE
INCOME TAX LAW.....BS SUB-TOTAL.....BS.

3.2 DEDUCTIONS (IN ACCORDANCE WITH ARTICLE 15 OF THE ORGANIC LAW
WHICH RESERVES TO THE STATE THE INDUSTRY AND COMMERCE OF HYDROCARBONS
WHOSE SPECIFICATIONS ARE SHOWN IN ANNEX "D")

3.2.1. IN ACCORDANCE WITH LINE A).....BS.

3.2.2. IN ACCORDANCE WITH LINE B).....BS.

3.2.3. IN ACCORDANCE WITH LINE C).....BS.

3.2.4. IN ACCORDANCE WITH LINE D) BROKEN DOWN IN THE FOLLOWING
MANNER:

A) NATIONAL TREASURY: BS.

B) STATES BS.

C) MUNICIPALITIES BS.

D) AUTONOMOUS INSTITUTIONS BS.

E) STATE ENTERPRISES BS.

TOTAL OF DEDUCTIONS BS.

3.3 ESTIMATED AMOUNT OF INDEMNIFICATION

II. ON THE FORM OF PAYMENT

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1. THE INDEMNIFICATION OF.....WILL BE PAID BY THE REPUBLIC TO
THE COMPANY YOU REPRESENT IN THE FOLLOWING FORM:

1.1 THE QUANTITY OF.....IN CASH CORRESPONDING TO THE AMOUNT
OF MATERIALS IN EXISTENCE AND IN TRANSIT ON DECEMBER 31, 1975 AND
WHICH DID NOT RECEIVE SPECIAL TREATMENT IN ACCORDANCE WITH ARTICLE
159 OF THE INCOME TAX LAW THROUGH THE PAYMENT OF THREE EQUAL AND
CONSECUTIVE QUOTAS COMING DUE ON THE LAST WORKING DAY OF THE MONTHS
OF JANUARY, FEBRUARY AND MARCH, 1976 AND,

1.2 THE QUANTITY OF.....TO BE DELIVERED TO THE COMPANY YOU REPRESENT

T

ON DECEMBER 31, 1975 OF PUBLIC DEBT BONDS OF THE FOLLOWING CHARACTERISTICS:

1.2.1 NATURE OF THE BOND: SERIAL BONDS ISSUED BY THE NATION.

1.2.2 TOTAL AMOUNT OF THE ISSUE: THE RESULT OF THE APPLICATION OF WHAT IS PROVIDED IN SECTION 3 OF CHAPTER 1, ONCE DEDUCTION IS MADE FROM THE CASH PAYMENT REFERRED TO IN SECTION 1.1 OF THIS CHAPTER

1.2.3 DENOMINATION OF BONDS: NOMINAL BONDS OF DIFFERENT DENOMINATIONS IN FAVOR OF THE COMPANY YOU REPRESENT WILL BE ISSUED.

1.2.4 CURRENCY IN WHICH THE PAYMENT IS STIPULATED: DOLLARS OF THE UNITED STATES OF AMERICA AT THE RATE OF EXCHANGE BS. 420.

1.2.5 DUE DATE AND FORM OF AMORTIZATION: FIVE-YEAR TERMS WITH A ONE-YEAR GRACE PERIOD. THE AMORTIZATION WILL BEGIN ON JANUARY 15, 19

77

ON WHICH DATE 20 PERCENT OF THE ISSUE WILL BE CANCELLED AND THE REMAINING 80 PERCENT WILL BE CANCELLED IN 16 TRIMESTERIAL, EQUAL AND CONSECUTIVE QUOTAS BEGINNING ON MARCH 29, 1977.

1.2.6 INTEREST ON THE BONDS AND TERMS OF PAYMENT: THE BONDS WILL EARN INTEREST AT THE RATE OF 6 PERCENT ANNUALLY, PAYABLE ON THE TRIMESTERIAL DUE DATES AND EXEMPT FROM THE PAYMENT OF INCOME TAX.

1.2.7 THE BONDS WILL BE NEGOTIABLE ABROAD. THEY CAN ONLY BE UTILIZED IN THE TERRITORY OF THE REPUBLIC IN THE ACQUISITION OF CRUDES AND DERIVED PRODUCTS UNDER THE CONDITIONS SPECIFIED BY PETROLEOS DE VENEZUELA TO THE HOLDER OF THE BONDS AND ALSO IN CASES WHICH ARE AUTHORIZED BY THE PRESIDENT OF THE REPUBLIC SITTING IN COUNCIL OF MINISTERS.

2. IF AFTER THE ADJUSTMENTS ARE MADE, THE AMOUNT OF INDEMNIFICATION PAYABLE IN PUBLIC DEBT BONDS IS GREATER THAN THE ESTIMATE IN THIS OFFER, A NEW SERIES OF BONDS WILL BE ISSUED WITH TERMS AND CONDITIONS CONFIDENTIAL

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AS ESTABLISHED IN THIS CHAPTER. IN THE EVENT THAT SUCH INDEMNIFICATION WERE SMALLER, A CORRESPONDING DEDUCTION WILL BE MADE FROM THE GUARANTY FUND.

3. ONCE A DEFINITIVE AMOUNT OF INDEMNIFICATION IS DETERMINED, AN ADJUSTMENT MAY RESULT CORRESPONDING TO INTEREST ALREADY PAID AND WHOEVER IS DETERMINED TO BE THE DEBTOR WILL PAY THE DIFFERENCE IN CASH WITHIN 15 DAYS OF THE DATE OF THIS ADJUSTMENT.

III ON OTHER DEDUCTIONS

WITHOUT PREJUDICE TO WHAT IS ESTABLISHED IN ARTICLE 19 OF THE ORGANIC LAW WHICH RESERVES TO THE STATE THE INDUSTRY AND COMMERCE OF HYDROCARBONS PROVISION IS MADE FOR THE SAFEGUARDING OF THE DEDUCTIONS WHICH, IN ACCORDANCE WITH ARTICLE 17 EJUSDEM, MAY BE MADE FROM THE INDEMNIFICATION AT THE TIME OF THE PRESENTATION

OF THE BONDS REFERRED TO IN SECTION 2 OF CHAPTER II.

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ACTION SS-25

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TO SECSTATE WASHDC NIACT IMMEDIATE 508

C O N F I D E N T I A L SECTION 2 OF 2 CARACAS 10672

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IV ON THE OBLIGATION OF CONSTITUTING A CORPORATION

1. FOR THE PURPOSES FORESEEN IN THE FOURTH SECTION OF ARTICLE 6 OF THE ORGANIC LAW WHICH RESERVES TO THE STATE THE INDUSTRY AND COMMERCE OF HYDROCARBONS, THE COMPANY YOU REPRESENT SHALL CONSTITUTE, IN ACCORDANCE WITH THE TEXT PREPARED BY THE NATIONAL EXECUTIVE AND WHICH WILL BE PRESENTED TO YOU AT AN OPPORTUNE TIME BY AN ORGAN OF THE MINISTRY OF MINES AND HYDROCARBONS, A CORPORATION WHOSE STOCK WILL BE TRANSFERRED IN ITS ENTIRETY TO "PETROLEOS DE VENEZUELA" UPON THE EXTINGUISHMENT OF THE HYDROCARBON CONCESSIONS ON DECEMBER 31, 1975 FOR WHICH THE LATTER WILL PAY IN CASH ON THAT SAME DATE A PRICE EQUAL TO THE SUBSCRIBED AND PAID CAPITAL. IN THE EVENT ASSETS PREVIOUSLY AUTHORIZED BY THE MINISTRY OF MINES AND HYDROCARBONS SHOULD BE ACQUIRED, THE CORRESPONDING EXPENSES WHICH MAY HAVE BEEN MADE WILL BE PAID.

2. THE SPECIFIC CHARACTERISTICS OF THE CORPORATION FORESEEN HERE SHOULD INCLUDE THE FOLLOWING ASPECTS: NAME, ADDRESS, SUBSCRIBED CAPITAL, CAPITAL ON HAND, STOCKHOLDERS; THE COMPANY YOU REPRESENT: 99 PERCENT, ANOTHER PARTNER: 1 PERCENT OF THE STOCK, NUMBER OF MEMBERS OF THE BOARD OF DIRECTORS; THE DETAILS OF WHICH WILL BE MADE KNOWN TO YOU WITHIN THE NEXT 15 DAYS. THE COMPANY YOU REPRESENT WITHIN THE NEXT 10 DAYS FOLLOWING UPON THE INSERTION OF THE CONSTITUENT DOCUMENT OF SUCH AN ENTERPRISE IN THE MERCANTILE REGISTER SHOULD PROCEED TO ACQUIRE THE TOTALITY OF THE STOCK OF THE CONSTITUTED ENTERPRISE. EXCEPT FOR THIS MODIFICATION, THE COMPANY YOU REPRESENT WILL NOT BE ABLE TO MAKE ANY CHANGE IN THE SPECIFIC CHARACTERISTICS INDICATED NOR IN THE CONSTITUENT DOCUMENT WITHOUT THE PRIOR AUTHORIZATION OF THE MINISTER OF MINES AND HYDROCARBONS.

ALSO THE COMPANY YOU REPRESENT, IN ITS CONDITION OF STOCKHOLDER, IS
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OBLIGATED IN THE SENSE THAT THE INDICATED ENTERPRISE MAY NOT ASSUME
ANY FINANCIAL OBLIGATION WITHOUT THE PRIOR AUTHORIZATION OF THE
MINISTER OF MINES AND HYDROCARBONS.

3. WITHIN THE 15 DAYS FOLLOWING THE ESTABLISHMENT OF SUCH A
COMPANY, THE COMPANY YOU REPRESENT WILL TRANSFER TO THE FOREMENTIONED
COMPANY THE OPERATION OF THE CONCESSIONS INDICATED IN SECTION 1
OF CHAPTER 1 OPERATED BY THE COMPANY YOU REPRESENT AND, WHENEVER IT
MAY BE THE CASE, THE OPERATION OF CONCESSIONS OF OTHER TITLE
HOLDERS AND WHICH ARE ACTUALLY OPERATED BY THE COMPANY YOU REPRESENT
AS WELL AS THE USE OF ASSETS RELATED TO SUCH CONCESSIONS USED IN
ITS OPERATION AND UNDER THE SOLE RESPONSIBILITY OF THE COMPANY YOU
REPRESENT; AND THE COMPANY YOU REPRESENT WILL TRANSFER TO IT THE
PERSONNEL WHICH MAY BE NECESSARY FOR THE REGULAR AND EFFICIENT
CONTINUATION OF THE MANAGEMENT OF SUCH CONCESSIONS. IT IS
UNDERSTOOD THAT THE CHANGE OF EMPLOYERS WILL OCCUR WITHOUT
RESOLVING THE ISSUE OF EMPLOYEE CONTINUITY AND THAT THE COMPANY YOU
REPRESENT WILL RETAIN ITS RIGHTS OVER THE ASSETS AND ITS TITLE
TO THE CONCESSIONS UNTIL THE DATE OF EXTINGUISHMENT.

4. THE COMPANY YOU REPRESENT WILL ALSO TRANSFER TO THE CORPORATION
SO CONSTITUTED THE OPERATION OF THE CONCESSIONS OF OTHER TITLE
HOLDERS AND WHICH ARE PRESENTLY OPERATED BY THE COMPANY YOU
REPRESENT, IF THAT SHOULD BE THE CASE, AS WELL AS THE USE OF ASSETS
RELATED TO SUCH CONCESSIONS AND USED FOR THE OPERATION OF SAME.

5. ALSO FOR THE PURPOSES OF THE OPERATION, TRANSFER WILL BE MADE OF
THE USE OF ASSETS RELATED TO THE CONCESSIONS IN WHICH THIRD PARTIES
HAVE AN INTEREST, IF THAT SHOULD BE THE CASE.

V. OF THE FINAL STIPULATIONS

1. THE REPUBLIC WILL ACQUIRE FROM THE COMPANY YOU REPRESENT
THROUGH THE AGENCY OF THE JURIDICAL PERSON WHICH IT WILL DESIGNATE
AT AN OPPORTUNE TIME THE INVENTORY OF CRUDES AND DERIVATIVES
OF HYDROCARBONS ON DECEMBER 31, 1975 AND PAYMENT WILL BE MADE BY
SUCH JURIDICAL PERSON UNDER CONDITIONS TO BE ESTABLISHED BY
SEPARATE DOCUMENT.

2. THE COMPANY YOU REPRESENT IS AUTHORIZED TO PAY IN THE MONTH OF
DECEMBER 1975 BASED ON THE ESTIMATES OF THE MINISTRY OF MINES AND
HYDROCARBONS THE EXPLOITATION TAX ON CRUDES PRODUCED, ON LPG
PRODUCTS SOLD, ON NATURAL GAS CONSUMED, ON NATURAL GAS SOLD,
AND ON SULPHUR SOLD, CORRESPONDING TO THE SAME MONTH OF DECEMBER 1975
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THESE QUANTITIES WILL BE ADJUSTED DURING THE COURSE OF THE MONTH OF JANUARY 1976.

3. THE COMPANY YOU REPRESENT ON ACCEPTING THE INDEMNIFICATION REFERRED TO IN THE PRESENT OFFER DECLARES EXPRESSLY THAT ONCE PAYMENT IS MADE OF THE INDEMNIFICATION FORESEEN IN THE PRESENT OFFER IT WILL HAVE NO FURTHER CLAIMS AGAINST THE REPUBLIC FOR THE DELIVERY AND TRANSFER OF ITS ASSETS.

(SU REPRESENTADA, AL ACEPTAR LA INDEMNIZACION A QUE SE REFIERE LA PRESENTE OFERTA, DECLARA EXPRESAMENTE QUE, UNA VEZ EFECTUADO EL PAGO DE LA INDEMNIZACION PREVISTA EN LA PRESENTE OFERTA, NADA MAS TIENE QUE RECLAMAR A LA REPUBLICA POR LA ENTREGA Y TRASPASO DE SUS BIENES.)

4. ALSO, IN ACCORDANCE WITH THE REQUIREMENTS OF ARTICLE 127 OF THE CONSTITUTION, THE DOUBTS AND CONTROVERSIES OF ANY NATURE WHICH MIGHT ARISE WITH REGARD TO THE EVENTS DESCRIBED AND WHICH ARE NOT RESOLVED AMICABLY BY THE PARTIES WILL BE DECIDED BY THE COMPETENT COURTS OF THE REPUBLIC OF VENEZUELA IN CONFORMITY WITH ITS LAW AND WITHOUT FOR ANY REASON OR CAUSE GIVING RISE TO A FOREIGN CLAIM.

I WOULD APPRECIATE YOUR RESPONDING WITHIN THE NEXT 15 DAYS FOLLOWING THE RECEIPT OF THIS COMMUNICATION IN ORDER TO PROCEED TO A CLOSE IN THIS MATTER.

ATTENTATIVELY,

VALENTIN HERNANDEZ

MINISTER

SHLAUDEMAM

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